



April 21, 2005

Morning Business:

Unprecedented Minority Veto

Floor Speakers:

Senator Coleman

Senator Thune

Senator Vitter

Noteworthy

“When well over 50 percent or over 60 percent of the citizens in those states [California and Texas] vote to support these judges to continue in office on their state supreme court, you’d hardly say that these nominees are out of the mainstream.”

Senator Kyl, as quoted in *The Christian Science Monitor*, 4/20/05

In the Press:

[When liberals were in power, they sang different tune on filibusters; *Chicago Sun Times*, Robert Novak](#) 4/21/05

[Senator Salazar takes judicial turn; *Denver Post*, David Harsanyi](#) 4/21/05

Events:

Senators Hutchison and Dole discuss nominations of Priscilla Owen and Janice Rogers Brown; 12:00pm, Senate Radio-TV Gallery

When liberals were in power, they sang different tune on filibusters

***Chicago Sun Times*, Robert Novak**

While reinventing himself at age 87 in his 47th year as a senator, Robert C. Byrd has denied his clear past use of parliamentary maneuver to force majority rule in the Senate. That fits the broader phenomenon of Democrats reinventing the senatorial filibuster, historically notorious for protecting racial segregation, into a weapon of liberalism.

Byrd's use of a simple majority rule to make Senate rules fit the wishes of dominant Democrats during the 1970s and 1980s was revealed by legal scholars in January. It took Byrd's lawyers until March 20 for him to claim he did not do what he did. In fact, there is no doubt Byrd led the Democrats in championing majority rights when they had a majority.

Liberal Democrats, who now extol the filibuster to protect minorities, were in the forefront advocating strict majority rule through most of my nearly 48 years as a reporter covering Congress. As recently as 2000, architects of the filibuster strategy to block President Bush's judicial nominees -- with Democrat Bill Clinton still in the White House -- were demanding straight up-or-down votes on judges.

The showdown in the Senate may be only three or four weeks away. The unprecedented Democratic blockage of 16 Bush appellate choices has led Senate Majority Leader Bill Frist to attempt a maneuver that, in effect, confirms a judge by a simple majority vote of 51 rather than the 60 needed to break a filibuster -- unfortunately first self-described by Republicans as the "nuclear option." The Democratic response that this approach assails constitutional rights was undermined by a close examination of Byrd's long record in the Senate.

In January, the Harvard Journal of Law & Public Policy published an account by two Washington lawyers, Martin B. Gold and Dimple Gupta, of what they called the "constitutional option." For more than a century, the Senate frequently resorted to parliamentary tactics to impose majority rule -- most recently by Bob Byrd.

Byrd, who entered political life as a Ku Klux Klan member, in the '60s was a conservative Democrat, and was delighted when Richard Nixon listed him as a possible Supreme Court nominee. Byrd's next role was as the hard-driving majority leader rolling over liberal dissenters. He since has taken a rapid trip to the left, with the radical MoveOn.org raising big money for his 2006 re-election.

Gold and Gupta cited four instances where Byrd had amended Senate rules with majority votes. Byrd ignored this report for two months until Republican Sen. Orrin Hatch on March 10 went on the Senate floor to discuss the four cases. It took 10 more days for Byrd to respond to Gold, Gupta and Hatch by denying the past: "Their claims are false . . . they are dead wrong. Dead wrong."

But Byrd cannot erase what really happened -- as on Oct. 3, 1977, when Majority Leader Byrd smashed a liberal filibuster against natural gas deregulation. The liberal Sen. James Abourezk of South Dakota complained that Byrd wanted "to change the entire rules of the Senate during the heat of the debate."

Usually, however, liberals were aligned against the filibuster, the bulwark preventing civil rights legislation until 1957. During Clinton's presidency, Senate Democratic leader Thomas Daschle and Sen. Edward M. Kennedy repeatedly demanded up-or-down majority votes on judicial nominations. Once Bush was elected, they crafted a filibuster strategy to block judicial nominees.

Through my reporting career on Capitol Hill, filibuster advocates did not utter the dreaded f-word (with Southern segregationists referring to it as "extended debate"). "Filibuster" was talked about by foes, such as Democratic Sen. Patrick Leahy on June 18, 1998: "I have stated over and over again on this floor that I would . . . object and fight against any filibuster on a judge."

Liberals now praise the filibuster by name. Leahy, the Judiciary Committee's ranking Democrat, on April 6 declared: "Eliminating the filibuster by the nuclear option would violate and destroy the Constitution's design of the Senate as an effective check on the executive."

Frist reiterated Tuesday that his plans refer only to nominations: "I will not act in any way to import the rights of colleagues when it comes to legislation." Robert Byrd observed no such boundaries when he was majority leader.

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Sen. Salazar takes judicial turn

DENVER POST

By David Harsanyi

Taking on Focus on the Family's James Dobson is a precarious activity.

There is always the risk that a horde of believers waving Dobson's classic tome of love and/or corporal punishment, "Dare to Discipline" will show up at your office to smack the holy fear of God into you.

Colorado Sen. Ken Salazar is probably feeling some of that discipline about now.

Why the fuss?

While campaigning as a pretend moderate before the elections, Salazar maintained that he favored up-or-down votes on judicial candidates.

On Wednesday, however, Salazar apparently changed his mind, held a press conference and proclaimed that he was more interested in protecting "the Senate as an institution."

Thank God we sent him to Washington.

Salazar, for all intent and purposes, now joins the fight led by fellow Democratic Sen. Robert Byrd to block 10 of President Bush's nominees, not allowing a simple up-or-down vote in the full Senate but using a loophole to block, not hold, the vote for "radical" candidates.

(Radical in Democratic lingo means anyone you disagree with.)

"Jurists continue to make law rather than interpret it," said Amanda Banks, federal-issues analyst for Focus on the Family. "The president has nominated common-sense, strict constructionists to the federal bench - and Democrats, with nothing else left, have resorted to unconstitutional tactics to block them."

Byrd, a former Klansman (is that radical?), knows a thing or two about filibusters, having helped 18 Democrats and a single Republican block the 1964 Civil Rights Act for 2 months (radical?) and as leader of the Senate, where he changed the rules on filibusters on four occasions (radical?).

If he's so concerned about tradition, why does Salazar feel the need to be the sentinel of an often-altered filibuster rule but turn his back on a 200-year Senate tradition wherein a judicial nominee with majority support has never been denied a simple up-or-down vote.

"The federal courts have attacked family values for decades," explains Banks. "Liberals realize that the judiciary is the only branch of government left through which they successfully advance their radical agenda."

(Note: In fairness, "radical" here also means "I disagree with you.")

Senate leader Bill Frist has taken a lot of heat for agreeing to join a telecast Sunday, sponsored in part by Focus on the Family, that is hyped as portraying Democrats as "against people of faith."

Banks believes Frist has a good case.

"Sen. (Charles) Schumer, for instance, has publicly expressed hesitation for nominee Leon Holmes due to Holmes' 'deeply held conservative religious views,'" Banks said. Same for Schumer's view of William Pryor. Sen. Dianne Feinstein also opposes Pryor because of his "deeply held religious beliefs."

Holmes and Pryor are both Catholics and abortion foes. "Clearly, there is a religious litmus test being imposed by some Senate Democrats," says Banks.

It may not be as complicated or as insidious as Focus believes.

Perhaps Democrats are simply exhibiting the histrionics of a sore loser. Stomping their feet and stopping the process.

As for Dobson, it is said he dreams of an indistinguishable slate of Christian conservatives judges across the nation. This would be a dangerous precedent for America. We are a country of inclusiveness, after all.

What we need is a full slate of conservative judges featuring all religions. I'm sure we could rustle up a Republican Jew, a Hindi or even an atheist jurist, for instance, to throw in the mix.

We'll never get there with this annoying filibuster.

"Salazar should follow through on his campaign pledge to Coloradans," said Banks, "and support up-or-down votes on all judicial nominees and quit bowing to the demands of the far left."